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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 78

HERBERT W. GOLDBLATT, *et al.*,

Appellants,

against

TOWN OF HEMPSTEAD,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

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The National Crushed Stone Association, which describes itself as "a trade association composed of commercial producers of crushed stone throughout the United States and Canada", moves this Court for permission to file a brief *amicus curiae* in connection with the above captioned appeal. Apparently anticipating this Court's favorable disposition of its motion, the Association appends to its request the brief which it seeks permission to file.

The appellee, Town of Hempstead, opposes the request for permission to file this brief *amicus curiae* on the grounds that the Association has failed to establish its

interest in the outcome of this appeal, and that the arguments it would urge are either irrelevant or duplicative of arguments already made by appellants.

The request for permission to file, and the brief itself, operate from the false assumption that the Court of Appeals of New York has held that *all* quarrying operations are evil and that as a result, the decision will prove devastating to the sand mining and quarrying industry as a whole. (See proposed brief *amicus curiae*, at pp. 8-9). The simple fact of the matter is that this case does not affect the entire sand mining industry. This case concerns a narrowly drawn ordinance of a town on Long Island affecting particular types of sandpits; among them sandpits that have pierced the water table forming water-filled craters like the one in question here. The Association's proposed brief cites many alleged statistics and figures, and much data concerning the sand and stone industry, but nowhere does it attempt to describe how much of the industry involves pits like the one that is the subject of the present case. Certainly, not all sand mining is done under water. Indeed, from all that appears in the Association's brief, this type of excavation may be relatively rare.

Moreover, and more fundamentally, the ordinance in question is not a zoning ordinance which prohibits sandpits; it is a regulatory ordinance which says, in effect, that sandpits may exist but only in compliance with the regulations set out in the ordinance. Sandpits may and can operate in the Town of Hempstead under the terms of the ordinance; however, their depth is limited to a point short of the water table in order to guarantee against the formation of artificial lakes like the one created in the case at bar. The ordinance contains other proscriptions. The Association, however, treats the ordinance as though it were a zoning ordinance which absolutely prohibits sandpits and quarrying operations and proceeds from that base. All the courts below have recognized the distinction

between the regulatory ordinance here under discussion and zoning ordinances which are supported by entirely different rationales and have an entirely different prohibitive effect.

This is the particular vulnerability of the Association's position on this motion; its alleged interest is premised upon a total misconception as to the effect of this ordinance. The case at hand is a much narrower one than the Association, and for that matter—the appellants—would have the Court believe. When this case is seen in its true perspective it is clear that the Association has no interest sufficient to justify the filing of the proposed brief *amicus curiae*, and permission to do so should be denied.

CONCLUSION

The motion of National Crushed Stone Association for leave to file a brief *amicus curiae* should be denied and the proposed brief should not be considered.

Respectfully submitted,

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